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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

IN RE: UBER TECHNOLOGIES, INC.,  
PASSENGER SEXUAL ASSAULT  
LITIGATION

Case No. 3:23-md-03084-CRB

**DEFENDANTS UBER TECHNOLOGIES,  
INC., RASIER, LLC, AND RASIER-CA, LLC'S  
REPLY IN SUPPORT OF THEIR MOTION TO  
DISMISS LEVIN SIMES CASES FOR  
FAILURE TO COMPLY WITH DISCOVERY  
ORDERS**

This Document Relates to:

*Jane Doe LS 293 v. Uber Technologies,  
Inc., et al.*, No. 3:23-cv-04364-CRB

*Jane Doe LS 231 v. Uber Technologies,  
Inc., et al.*, No. 3:23-cv-04367-CRB

*Jane Doe LS 144 v. Uber Technologies,  
Inc., et al.*, No. 3:23-cv-04388-CRB

Judge: Honorable Charles R. Breyer  
Date: March 28, 2025  
Time: 10:00 a.m.  
Courtroom: 6 – 17th Floor

1 *Jane Doe LS 112 v. Uber Technologies,*  
*Inc., et al.*, No. 3:23-cv-05286-CRB

2 *Jane Doe LS 284 v. Uber Technologies,*  
3 *Inc., et al.*, No. 3:23-cv-05363-CRB

4 *Jane Doe LS 126 v. Uber Technologies,*  
*Inc., et al.*, No. 3:23-cv-05370-CRB

5 *Jane Doe LS 265 v. Uber Technologies,*  
6 *Inc., et al.*, No. 3:23-cv-05377-CRB

7 *Jane Doe LS 200 v. Uber Technologies,*  
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8 *Jane Doe LS 66 v. Uber Technologies,*  
9 *Inc., et al.*, No. 3:23-cv-05414-CRB

10 *Jane Doe LS 317 v. Uber Technologies,*  
*Inc., et al.*, No. 3:23-cv-05424-CRB

11 *Jane Doe LS 234 v. Uber Technologies,*  
12 *Inc., et al.*, No. 3:23-cv-05433-CRB

13 *Jane Doe LS 191 v. Uber Technologies,*  
*Inc., et al.*, No. 3:23-cv-05573-CRB

14 *Jane Doe LS 273 v. Uber Technologies,*  
15 *Inc., et al.*, No. 3:23-cv-05946-CRB

16 *Jane Doe LS 470 v. Uber Technologies,*  
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18 *Inc., et al.*, No. 3:24-cv-05327-CRB

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*Inc., et al.*, No. 3:24-cv-05335-CRB

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

Levin Simes LLP’s (Levin Simes’) Opposition repeats the same ill-conceived arguments that it already presented to Judge Cisneros, and that Judge Cisneros rejected. *Compare* Levin Simes Plaintiffs’ Opp’n to Defs.’ Mot. to Dismiss Levin Simes Cases for Failure to Comply with Disc. Orders at 2, ECF 2436 (“Opp’n”) (“Uber wrongly presents this issue as one of refusal by the clients to fill out a Plaintiff Fact Sheet, as if they were unwilling to comply with the Court’s Orders.”), *with* Joint Disc. Letter Br. Regarding Levin Simes Pls.’ Overdue Fact Sheets at 4, ECF No. 1988 (“Uber wrongly presents this issue as one of refusal by the clients to fill out a fact sheet, as if they were unwilling to comply with the Court’s Orders.”). Plaintiffs’ counsel’s repetition of these long-ago-rejected arguments is unsurprising, as there is no dispute that each Plaintiff at issue in this motion has, in fact, blown the deadline under Pretrial Order No. 10 (“PTO 10”) to provide a Plaintiff Fact Sheet (“PFS”) **by several months**. *See* Decl. of Kyle Smith in Supp. of Defs.’ Mot. to Dismiss Levin Simes Cases for Failure to Comply with Disc. Orders, Ex. A, ECF 2358-2 (“Smith Decl., Ex. A”) (identifying Plaintiffs at issue and missed deadlines). Nor is any meaningful explanation offered for why these Plaintiffs failed to comply with Judge Cisneros’s December 19, 2024 order compelling each Plaintiff at issue to provide a PFS by January 10, 2025. Order Regarding Untimely Plaintiff Fact Sheets from Levin Simes Clients (the “December 19, 2024 Order”) at 2–3, ECF No. 1995. Even that extended deadline passed 60 days ago.

Instead, Plaintiffs’ counsel from Levin Simes explains that the law firm “has been unsuccessful in obtaining current contact information in order to reach” Plaintiffs. Opp’n at 2. Levin Simes states that it has been unsuccessful despite “employing all of the resources available,” including “numerous phone calls, emails, texts, written letters, and address searches” as well as employing “investigators to trace new contact information.” *Id.* But those facts serve only to support the argument in this motion—that these Plaintiffs are no longer participating in the litigation process, and are thereby no longer willing to comply with the orders of the Court. And as Judge Cisneros recognized, “the Ninth Circuit has ‘made it abundantly clear . . . that litigants must make some reasonable effort to remain in contact with their attorneys and apprised of the

status of their cases.” December 19, 2024 Order at 2 (quoting *Virtual Vision, Inc. v. Praegitzer Indus., Inc.*, 124 F.3d 1140, 1145 (9th Cir. 1997)). Clearly, the Plaintiffs at issue in this motion failed to meet that requirement.

Ultimately, the principal facts are entirely undisputed: there are dozens of Plaintiffs at issue in this motion who have ignored the Court’s multiple orders, failed to provide required discovery, and, by counsel’s own admission, are not engaged with this litigation. The question is the remedy for that situation. Uber has presented abundant case law establishing that the appropriate remedy is dismissal of the cases with prejudice, a well-established course of action in MDL litigation.<sup>1</sup> Levin Simes suggests a hodge-podge of proposed remedies—granting counsel “additional time for our firm to obtain current contact information for each Plaintiff and to complete the fact sheet, dismissal without prejudice, and/or remand or severance of these claims from the MDL,” Opp’n at 2—but none have any merit. Adoption of these proposals would send the clear message that any party has the option of choosing not to respect and comply with this Court’s and Judge Cisneros’s orders and there will be no real consequences for non-compliance. Uber’s proposed remedy—granting Plaintiffs one final chance (14 days from the Court’s order) to provide the fact sheet and ordering dismissal with prejudice in the case of continued non-compliance—is more lenient than what has been imposed in many other cases and should be entered here.

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<sup>1</sup> E.g., *In re Phenylpropanolamine (PPA) Prods. Liab. Litig. (In re PPA)*, 460 F.3d 1217, 1232–34 (9th Cir. 2006) (affirming dismissal with prejudice for failure to submit required fact sheets); *In re Bextra & Celebrex Mktg. Sales Prac. & Prods. Liab. Litig. (In re Bextra)*, 2007 WL 136625, at \*2 (N.D. Cal. Jan. 12, 2007) (Breyer, J.) (ordering dismissal with prejudice for failure to submit required fact sheets); *In re Taxotere (Docetaxel) Prods. Liab. Litig. (In re Taxotere)*, 966 F.3d 351, 354 (5th Cir. 2020) (affirming dismissal with prejudice); *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 496 F.3d 863, 865–66 (8th Cir. 2007) (affirming dismissal with prejudice in cases where plaintiffs failed to submit timely fact sheets); *In re Gen. Motors LLC Ignition Switch Litig.*, 2019 WL 12048517, at \*2 (S.D.N.Y. Sept. 9, 2019) (ordering dismissal with prejudice); *In re C.R. Bard, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, 2018 WL 1109553, at \*2 (S.D.W. Va. Feb. 28, 2018) (same); *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Prac. & Prods. Liab. Litig.*, 2015 WL 12844447, at \*3 (D.S.C. June 19, 2015) (same); *In re Plavix Mktg., Sales Prac. & Prods. Liab. Litig. (No. II)*, 2015 WL 12746199, at \*2 (D.N.J. Sept. 1, 2015) (ordering dismissal with prejudice for failure to submit plaintiff profile form); *In re Fosamax Prods. Liab. Litig.*, 2010 WL 2465497, at \*1 (S.D.N.Y. June 15, 2010) (same); Pretrial Order No. 252: Granting Mot. to Dismiss for Failure to Submit PFS at 1, *In re Roundup Prods. Liab. Litig.*, No. 3:16-md-02741-VC (N.D. Cal. Sept. 27, 2021), ECF No. 13858.

## ARGUMENT

### **I. MDL Courts Regularly Dismiss Cases with Prejudice Due to Failure to Provide Court-Ordered Discovery**

To fulfill its purpose of promoting “the just and efficient conduct” of the more than 1,800 cases pending before it, 28 U.S.C. § 1407(a), the Court “must establish schedules with firm cutoff dates” for compliance, *In re PPA*, 460 F.3d at 1232; *see also In re Mirena IUD Prods. Liab. Litig.*, 2015 WL 10433457, at \*2 (S.D.N.Y. Mar. 5, 2015) (“In a complex and sprawling MDL such as this, this Court cannot administer the case efficiently and fairly if lawyers or parties disregard the deadlines and procedures that were negotiated, and agreed to, by both sides.”). PTO 10 sets clear deadlines for each Plaintiff to provide a complete and verified PFS. PTO 10 at 5–6, ECF No. 348. Those deadlines passed for each of the Plaintiffs at issue in this motion several months ago. Smith Decl., Ex. A. Judge Cisneros likewise ordered each Plaintiff to provide the overdue fact sheet by January 10, 2025. December 19, 2024 Order at 2–3. None of the 57 Plaintiffs at issue in this motion complied with that order, and 54 Plaintiffs remain noncompliant.<sup>2</sup>

As outlined in Uber’s motion and above, several other MDL courts have elected to dismiss cases with prejudice when presented with plaintiffs’ failure to provide court-ordered discovery. Defs.’ Mot. to Dismiss Levin Simes Cases for Failure to Comply with Disc. Orders at 2–3 & n.1, ECF 2358 (“Mot.”) (collecting many cases, including *Nwatulegwu v. Boehringer Ingelheim Pharms., Inc.*, 668 F. App’x 173, 173–75 (7th Cir. 2016) (“Strict adherence to case management orders is necessary to manage multidistrict litigation . . . and our sister circuits have affirmed dismissals with prejudice based on noncompliance with discovery deadlines.”)). Submission of Plaintiff Fact Sheets with deficiencies also frequently results in dismissal with prejudice. *E.g., In*

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<sup>2</sup> Three Plaintiffs have submitted verified fact sheets since the filing of this motion. Those Plaintiffs are Jane Doe LS 232, No. 3:24-cv-05327, MDLC ID 2398; Jane Done LS 518, No. 3:24-cv-05761, MDLC ID 2317; and Jane Doe LS 532, No. 3:24-cv-06927, MDLC ID 2651. Uber is not seeking dismissal with prejudice as to these Plaintiffs at this time. Plaintiffs’ Opposition also states that three unidentified Plaintiffs at issue in this motion are either incarcerated or deceased. Opp’n at 5 n.2. This information had not previously been shared with Uber. The parties will meet and confer as to these three unidentified Plaintiffs, and, before the hearing date for this motion, Uber will submit a supplemental notice identifying the Plaintiffs who are still at issue in this dispute.

1 *re Mirena IUD Prods. Liab. Litig.*, 2015 WL 10433457, at \*2 (dismissing with prejudice the cases  
 2 of plaintiffs who failed to submit Plaintiff Fact Sheets containing all core criteria); *In re Zicam*  
 3 *Cold Remedy Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2011 WL 3438862, at \*2 & n.1 (D. Ariz.  
 4 Aug. 5, 2011) (dismissing with prejudice the cases of plaintiffs due to deficiencies in their Plaintiff  
 5 Fact Sheet submissions); *In re Rezulin Prods. Liab. Litig. (MDL No. 1348)*, 223 F.R.D. 109, 113,  
 6 120 (S.D.N.Y. 2004), *vacated in part*, 2004 WL 1700618, at \*1–2 (S.D.N.Y. July 27, 2004)  
 7 (vacating dismissal with prejudice order as to plaintiffs who provided proof of timely and complete  
 8 discovery and denying reconsideration as to all other plaintiffs). As does the failure to comply  
 9 with other judicially imposed discovery requirements. *E.g., In re Deepwater Horizon*, 907 F.3d  
 10 232, 234 (5th Cir. 2018) (per curiam) (affirming dismissal with prejudice of plaintiffs who failed  
 11 to comply with pretrial order requiring plaintiffs file declarations with a wet-ink signature);  
 12 *Nwatulegwu*, 668 F. App'x at 173–75 (affirming dismissal with prejudice of plaintiffs who failed  
 13 to comply with pretrial order requiring the production of medical and pharmacy records); *In re*  
 14 *Asbestos Prods. Liab. Litig. (No. VI)*, 718 F.3d 236, 240 (3d Cir. 2013) (affirming dismissal with  
 15 prejudice of plaintiffs who failed to comply with pretrial order requiring production of specific  
 16 histories of plaintiffs' exposure to asbestos). In response to this well-established body of case law,  
 17 Plaintiffs assert that certain cases are distinguishable because PTO 10 does not state that Plaintiffs'  
 18 cases may be dismissed for non-compliance and because bellwethers have been selected.

19 But the Court's authority to dismiss cases with prejudice for non-compliance with its orders  
 20 does not flow from PTO 10; it flows from Rules 16(f)(1)(C), 37(b)(2)(A)(v), and 41(b) of the  
 21 Federal Rules of Civil Procedure; cases like *Malone v. U.S. Postal Service*, 833 F.2d 128 (9th Cir.  
 22 1987); and the Court's inherent authority to manage its own docket. And as discussed above, the  
 23 issue in these cases is not lack of reasonable notice. Judge Cisneros has already compelled  
 24 Plaintiffs to provide the overdue discovery (and noted that Uber may seek "dispositive sanctions"  
 25 from this Court for further non-compliance). December 19, 2024 Order at 3. Uber also does not  
 26 seek an order directly dismissing these cases with prejudice. Instead, Uber proposes that the Court  
 27 provide Plaintiffs with one last chance to comply and clear warning that continued non-compliance  
 28 will result in dismissal with prejudice. Levin Simes opposes that option because it has not been in

1 contact with its clients for months and potentially years, a fact that would not be different if PTO 10  
 2 contained a sentence reminding Plaintiffs that there may be consequences for violating the Court's  
 3 orders (as if that somehow had not already been known to Plaintiffs and their counsel at Levin Simes).

4 Plaintiffs also imply that PTO 10 might be somehow construed as requiring discovery only  
 5 in the cases selected as bellwethers. PTO 10 does not establish such a procedure; it applies to all  
 6 cases within this MDL. PTO 10 clearly and unequivocally states that "[e]ach Plaintiff must submit  
 7 a completed PFS." PTO 10 at 4. Plaintiffs' arguments are thus inconsistent with PTO 10 and  
 8 inconsistent with the dismissals with prejudice ordered by several MDL courts when presented  
 9 with similar failures to provide court-ordered discovery.

## 10 **II. Plaintiffs' Failure to Comply with Court Orders Has Caused Prejudice**

11 The Ninth Circuit has recognized that failure "to produce documents as ordered . . . is  
 12 considered sufficient prejudice" to justify dismissal. *Adriana Int'l Corp. v. Thoeren*, 913 F.2d  
 13 1406, 1412 (9th Cir. 1990). But the prejudice Plaintiffs have created in these cases goes beyond  
 14 "mere" non-compliance with Court orders.

15 First, by not providing fact sheets, Plaintiffs directly and unfairly limited the cases that  
 16 Uber could select as bellwethers. *See* Pretrial Order No. 21 ("PTO 21") at 2, ECF No. 1950 (a  
 17 Plaintiff must have submitted a PFS to be eligible for inclusion in the bellwether pool). Judge  
 18 Cisneros recognized this exact possibility when ordering these Plaintiffs to comply with PTO 10  
 19 by January 10. December 19, 2024 Order at 2 ("Excusing failure to provide timely and complete  
 20 PFSs at this stage of the case invites potentially gamesmanship by plaintiffs who might wish to  
 21 avoid having their cases selected as bellwethers."). It would be patently unfair for Plaintiffs to  
 22 deploy this tactic without any consequence.

23 It is also important to recognize that although the parties have selected initial bellwether  
 24 cases, certain of these cases may fall out of the pool. As the Court recognized in PTO 21, a plaintiff  
 25 may refuse to participate as a bellwether, in which case they will be "subject to a motion to dismiss  
 26 for failure to prosecute," and Uber "may select a substitute Plaintiff." PTO 21 at 2. Several of the  
 27 Plaintiffs at issue in this motion could be ones that Uber may wish to select in the event a substitute  
 28 pick is required, but these Plaintiffs remain non-compliant with the Court's orders and are failing

1 to prosecute their case under Federal Rule of Civil Procedure 41(b).

2 Second, independent of the fact sheet process, Plaintiffs have caused prejudice by denying  
 3 Uber critical information about the cases being brought against it. The Plaintiff Fact Sheets contain  
 4 basic but fundamental information “regarding the critical elements” of Plaintiffs’ claims. *In re*  
 5 *PPA*, 460 F.3d at 1234; *see also In re Bextra*, 2007 WL 136625, at \*1 (concluding that without a  
 6 PFS, defendants could not “defend themselves because they ha[d] no information about the  
 7 individual plaintiffs or the plaintiffs’ injuries outside the allegations of the complaint”). The  
 8 Plaintiff Fact Sheets also contain releases authorizing Uber to request vital health care and law  
 9 enforcement records even in non-bellwether cases. *See* Am. PFS, Exs. A–C, ECF 360-2. Uber  
 10 cannot utilize those releases in these cases where Plaintiffs withhold them in violation of the  
 11 Court’s orders, causing prejudice. *See In re Bextra*, 2007 WL 136625, at \*1 (“The defendants are  
 12 also prejudiced by the loss of evidence and memory that attend the delay in providing required  
 13 discovery, factors that are aggravated by the complexity of this litigation.”). Hence, even though  
 14 Uber did not and could not select any of the cases at issue in this motion as bellwethers, Plaintiffs’  
 15 non-compliance with the Court’s orders has prejudiced Uber and continues to do so. *See In re*  
 16 *Guidant*, 496 F.3d at 867 (“Given the time pressure on a defendant that must investigate the claims  
 17 of nearly 1,400 plaintiffs, we consider the danger of prejudice [stemming from overdue Plaintiff  
 18 Fact Sheets] substantial.”). Dismissal with prejudice is a justified consequence should Plaintiffs  
 19 remain non-compliant after receiving a final warning.

## 20 CONCLUSION

21 For the foregoing reasons, the Court should order the Plaintiffs at issue in this motion to  
 22 provide complete and verified Plaintiff Fact Sheets as required by PTO 10 and Judge Cisneros’s  
 23 December 19, 2024 Order within 14 days of the Court’s order. As other MDL courts have done,  
 24 this Court should subsequently dismiss with prejudice the case of any Plaintiff who continues to  
 25 violate the Court’s orders. *See In re Zostavax (Zoster Vaccine Live) Prods. Liab. Litig.*, 2022 WL  
 26 3309471, at \*2 (E.D. Pa. Aug. 11, 2022) (“[T]he court doubts the effectiveness of any sanction  
 27 [for failure to serve a timely PFS] other than dismissal with prejudice. Ensuring obedience to  
 28 discovery orders in an MDL is paramount.”).

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